

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANDREAS PEFANIS, on behalf of himself and
others similarly situated,

Plaintiff,

Case No. 08-cv-002 (DC) (DFE)

- v. -

DECLARATION OF DEFENDANT'S
ATTORNEY IN SUPPORT OF MOTION

WESTWAY DINER, INC.,

Defendant.

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ARTHUR H. FORMAN declares the truth of the following under penalty of perjury:

1. I am the attorney for the Defendant in the above captioned action. I submit this Affirmation in opposition to the motion of the Plaintiffs for class action certification.
2. Annexed hereto as Exhibit "A" is the plaintiffs' Amended Complaint.
3. Annexed hereto as Exhibit "B" is the Consent to become a party plaintiff of Salvador Peralta.
4. Annexed hereto as Exhibit "C" is a true copy of the transcript of the order of the Court granting plaintiffs motion to certify the case as a Rule 23 class action.
5. Annexed hereto as Exhibit "D" is a true copy of the deposition of opt-in plaintiff, Salvador Peralta.
5. Annexed hereto as Exhibit "E" are true copies of the 15 executed opt-out forms of class members which were provided to your affiant by plaintiffs' counsel.
6. Annexed hereto as Exhibit "F" is a true copy of the Plaintiffs' responses to defendant's second set of discovery demands.

Dated: April 30, 2010
Forest Hills, New York

MITCHELL & INCANTALUPO

/S/

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Attorneys for Defendant